

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SCOTT E. BATEMAN,

CASE NO. 19-5034 RJB

Plaintiff,

**ORDER ON PLAINTIFF'S
RENEWED MOTION FOR
REMAND**

**USAA CASUALTY INSURANCE
COMPANY,**

Defendant.

THIS MATTER comes before the Court on the Plaintiff's Renewed Motion for Remand.

Dkt. 17. The Court has considered the pleadings filed regarding the motion and the remaining file

Originally filed on December 4, 2018, in Pierce County, Washington Superior Court, this case asserts claims against Defendant USAA Casualty Insurance Company (“USAA”) arising from injuries sustained by its insured in a car accident involving another motorist, who fled the scene. Dkt. 1-3. On January 11, 2019, USAA removed the case to this Court based on the diversity of the parties’ citizenship and the amount in controversy, pursuant to 28 U.S.C. §

1 1332(a). Dkt. 1. After denial of the Plaintiff's first motion to remand (Dkt. 15) and subsequent
2 filing of an Amended Complaint (Dkt. 21), the Plaintiff now moves to remand the case, asserting
3 there is now no ambiguity - the amount in controversy is less than \$75,000 (Dkt. 17). For the
4 reasons provided below, the renewed motion to remand (Dkt. 17) should be granted.

5 **I. FACTS**

6 According to the Amended Complaint, at the relevant time, Plaintiff was an insured driver
7 under a policy issued by USAA, which included benefits for injuries resulting from an accident
8 with an uninsured/underinsured ("UIM") motorist. Dkt. 21, at 3. Under the heading
9 "Entitlement to UIM Damages," the Amended Complaint provides that "Plaintiff seeks an
10 amount up to \$72,500." *Id.*, at 4. The Plaintiff also makes claims under the Washington
11 Consumer Protection Act, RCW 19.86, *et. seq.* ("CPA"). The Plaintiff seeks damages, including
12 treble damages under the CPA, attorneys' fees, and costs. *Id.*

13 The Plaintiff renews his motion to remand the case. Dkt. 17. He argues that, while the
14 parties are completely diverse in their citizenship, the \$75,000 in controversy amount (as
15 required by 28 U.S.C. § 1332 (a)) is not met. *Id.* The Plaintiff states that with his Amended
16 Complaint, he "seeks to remove any ambiguity regarding the monetary limit of this action: no
17 more than \$72,500." *Id.* USAA opposes the motion. Dkt. 22. The motion is ripe for review.

18 **II. DISCUSSION**

19 Removal of a case from a state court to a United States District Court is governed by the
20 provisions of 28 U.S.C. §§ 1441 and 1446. Section 1441 provides, in relevant part, as follows:

21 Except as otherwise expressly provided by Act of congress, any civil action
22 brought in a State court of which the district courts of the United States have
23 original jurisdiction, may be removed by the defendant or defendants, to the
24 district court of the United States for the district and division embracing the place
where such action is pending. . .

1 28 U.S.C. § 1441(a). USAA asserts that this court has original jurisdiction in this case under §
2 1332 (a) because of the diversity of the parties' citizenship and the amount in controversy. Dkt.
3 1. Section 1332 (a) provides that diversity jurisdiction exists only "where the matter in
4 controversy exceeds the sum or value of \$75,000, exclusive of interests and costs." 28 U.S.C. §
5 1332 (a). Under 28 U.S.C. § 1446 (c)(2),

6 If removal of a civil action is sought on the basis of the jurisdiction conferred
7 by section 1332 (a), the sum demanded in good faith in the initial pleading
shall be deemed to be the amount in controversy, except that –

8 (A) the notice of removal may assert the amount in controversy if the
initial pleading seeks -

9 (i) nonmonetary relief; or

10 (ii) a money judgment, but the State practice either does not permit
11 demand for a specific sum or permits recovery of damages in excess of
the amount demanded; and

12 (B) removal of the action is proper on the basis of an amount in
13 controversy asserted under subparagraph (A) if the district court finds, by
14 the preponderance of the evidence, that the amount in controversy exceeds
the amount specified in section 1332(a).

15 28 U.S.C. § 1446. Accordingly, "when a defendant seeks federal-court adjudication, the
16 defendant's amount-in-controversy allegation should be accepted when not contested by the
17 plaintiff or questioned by the court." *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S.
18 Ct. 547, 553 (2014). When, as here, the plaintiff contests the defendant's assertion, "the
19 removing defendant bears the burden of establishing, by a preponderance of the evidence, that
20 the amount-in-controversy exceeds the jurisdictional threshold." *Chavez v. JPMorgan Chase &*
21 *Co.*, 888 F.3d 413, 416 (9th Cir. 2018)(internal quotation marks and citation omitted). Section
22 1332 (a)'s amount-in-controversy requirement includes claims for damages and attorneys' fees.
23 *Chavez*, at 416 and *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 700 (9th Cir.

1 2007)(holding “amount-in-controversy requirement excludes only ‘interest and costs’ and
2 therefore includes attorneys’ fees”).

3 Plaintiff's motion for remand (Dkt. 17) should be granted. The Plaintiff now states that
4 he is "limiting his recovery to no more than \$72,500." Dkt. 17. He has now demonstrated, by a
5 preponderance of the evidence, the amount-in-controversy, including attorneys' fees, is less than
6 \$75,000. While the Defendant properly points out that there were substantial grounds, at the
7 time of removal, to believe that the amount in controversy was over \$75,000, it is now clear that
8 is not the case. Pursuant to 28 U.S.C. § 1447 (c), "[i]f at any time before final judgment it
9 appears that the district court lacks subject matter jurisdiction, the case shall be remanded." This
10 Court no longer has subject matter jurisdiction, so the Plaintiff's motion for remand should be
11 granted. The case should be remanded to Pierce County, Washington Superior Court.

III. ORDER

It is ORDERED that:

- The Plaintiff's Renewed Motion for Remand (Dkt. 17) **IS GRANTED**;
- This case **IS REMANDED** to Pierce County, Washington Superior Court.

The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any party appearing *pro se* at said party's last known address.

Dated this 13th day of May, 2019.

Robert J. Bryan

ROBERT J. BRYAN
United States District Judge